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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.1015/2017, CM No.33652/2017 (for stay) and CM
No.33654/2017 (for condonation of 10 days delay in re-filing).
AWDESH CHAND JAUHARI & ANR Petitioners
Through: Mr. S.P. Gairola, Adv.
versus
SARIKA JAUHARI & ANR Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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15.09.2017

CM No.33651/2017 (for exemption) and CM No.33653/2017 (exemption from filing complete Trial Court record).

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

CM(M) No.1015/2017, CM No.33652/2017 (for stay) and CM No.33654/2017 (for condonation of 10 days delay in re-filing).

3. This petition under Article 227 of the Constitution of India impugns the orders (dated 11th July, 2016 and 13th April, 2017 in CS No.445/16 of the Court of Additional District Judge – 03 (North-West), Rohini Courts, Delhi) closing the right of the two petitioners to file written statement and dismissing the application of the petitioners under Section 5 of the Limitation Act, 1963 for condonation of delay in filing written statement.

4. The undisputed position is (i) that the petitioners / defendants no.1&2 were served with the summons of the suit on 9th June, 2016 for date of hearing of 11th July, 2016; (ii) that the petitioners / defendants no.1&2 appeared before the Court on 11th July, 2016 but neither filed written
CM(M) No.1015/2017

statement nor any application for extension of time for filing written statement; resultantly opportunity to file written statement was closed; and, (iii) the petitioners / defendants no.1&2, after another seven months, on 16th February, 2017, filed written statement along with the application under Section 5 of the Limitation Act, 1963 for condonation of delay in filing written statement; the learned Additional District Judge has in the aforesaid circumstances refused to condone the delay or take the written statement on record.

5. The counsel for the petitioners / defendants no.1&2 contends that the compromise talks were taking place between the petitioners / defendants no.1&2 on the one hand and the respondent no.1 / plaintiff, who is the sister of the petitioners, on the other hand.

6. Such grounds cannot be allowed to be taken to defeat the provisions introduced in the Code of Civil Procedure, 1908 (CPC) by amendment of the year 2002, with the intent to avoid delays, in disposal of suits, at the stage of filing of written statement. Though the said provisions have been held to be directory and not mandatory but even if they be directory, the same cannot be a reason for ignoring the provisions on any excuse being given.

7. Nothing prevented the petitioners / defendants no.1&2 from, even if compromise talks were underway, either applying to the Court for extension of time for filing written statement or from filing the written statement without prejudice to their rights and contentions in the negotiations, so that in the event of negotiations not fructifying, the suit could proceed expeditiously.

8. I have in the order dated 2nd August, 2017 in CM(M) No.813/2017 titled ***Leena Devi Vs. Sushil Aggarwal*** held that it is owing to the Courts CM(M) No.1015/2017

continuing to grant indulgence inspite of such amendments to CPC, that the litigants and the members of the Bar have not given due weightage thereto and continue to delay filing of the written statement in the hope that in the name of “interest of justice” the same will be taken on record, whenever filed. Time has come to change the said impression / perception which seems to have gone around and to send a clear and strong message that the said provisions, introduced in the CPC by amendment, have to be abided by. Else, the legislative effort of expediting disposal of suits would go waste.

9. I may also notice that not only was there a delay on the part of the petitioners / defendants no.1&2 in filing the written statement but there is delay also in the order dated 11th July, 2016, challenge where to has been brought after more than one year. This petition, insofar as concerning the challenge thereto, is liable to be dismissed for laches, acquiescence and waiver. Even after being aggrieved from the order dated 13th April, 2017, the petitioners / defendants did not show any hurry and have filed this petition after nearly five months. From such conduct, it is clear that the endeavour of the petitioners / defendants is to delay at each and every stage.

10. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 15, 2017

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